plaintiff's title should be found good and sufficient, do join in a conveyance thereof to the defendant.

It is further ordered and decreed, that each party pay his and her own costs.

GEO. W. DARGAN, Ch.

The following were the grounds of appeal:—

First. Because "right heirs," may be "*designatio personarum*," or words of purchase as well as "heirs of the body," in grants or deeds, as well of real as of personal estate.

Second. Because "right heirs," in this deed, should be taken as words of purchase, from the concurrence of these provisions, first, an express life estate to Mrs. Danner,—next, a contingent remainder to her "right heirs," and third, the addition of words showing an intention to make the "right heirs" a new stock of inheritance or purchasers.

McCrady, for Appellant.

Petigru and King, for Appellee.

The Court of Appeals affirmed the decision of the Chancellor.

Louisville Chancery Court, Kentucky, January, 1854.

JACKSON, OWSLEY & CO., *vs.* THE ÆTNA INS. CO.

1. Insurance on "the stock of a pork-house," made in the name of the owners of the establishment, includes the pork, &c., of others, which is there on commission, although in the printed conditions of the policy it is stated that "goods held in trust or on commission, are to be insured as such, otherwise the policy will not cover such property."
2. If that condition is substantially complied with, that is sufficient.
3. A contract to sell a part of the pork, the absolute property of the owners of the pork-house, and the weighing off the same, inspected by the inspector of the

vendees, separated the property from the *stock*, and it was no longer included in the policy, although the vendors were, by a separate contract, to smoke it at the establishment.

The opinion of the Court was delivered by

PIRTLE, CH.—The plaintiffs were owners of a *pork-house* and pork packing establishment in the city of Louisville, and they procured insurance of the defendants "against loss or damage by fire, to the amount of five thousand dollars, on pork, lard, bacon, bulkmeat, hogs hanging, or otherwise, salt barrels, kegs, and all other articles composing the stock of a pork-house, contained in their pork-packing, lard and smoke-houses." In the printed conditions referred to in the policy, it is stated that "goods held in trust or on commission are to be insured as such, otherwise the policy will not cover such property." "Goods on storage must be separately and specifically insured."

The plaintiffs had a large quantity of their own pork, &c., in the establishment, and a larger quantity belonging to other persons, acked from hogs killed by them, and held on commission, or for others on consignment. There was also insurance by other underwriters, against fire, on the *stock;* $25,000 in the name of Jackson, Owsley & Co., and $35,000 in their name, "or whom it may concern." The policy sued on provides for abatement or contribution in case of other insurance.

A loss by fire happened to the amount of $56,514 $\frac{68}{100}$; of this amount $36,573 $\frac{70}{100}$ was on commission, or consignment; and it is contended that about $13,000 of the residue of the loss was on pork that had been sold to Harbinson & Hansborough.

It appears in proof, that a great part of the work done at these pork-packing establishments, is for other persons besides the owners of the pork-houses, &c.; and that a large quantity of the pork, &c., that is on hand is the property of other persons; that the term "pork-house," in Louisville, means a house where pork is received and packed for others on commission, as well as for the proprietors. It also appears that these other persons generally instructed Jackson, Owsley, & Co., to have their property in the pork-house insured against fire, and that the plaintiffs held themselves bound to have all the property they held in the establishment insured.

The defendants contend that they are not bound to contribute any thing in regard to the loss on the property of which the plaintiffs were not the absolute owners.

The pork trade is very extensive in the Western States, and this question of insurance is one of great importance, but I think it can be disposed of in a few words.

It is not denied that they would be liable for the property on commission, &c., if the expression "or for whom it may concern" were contained in this policy. But such an expression would not be a literal compliance with the printed condition in regard to such goods. Is a literal compliance necessary?

The intention of such a condition is, to be *sure* as to the extent of the contract; to have that only insured for which a premium is paid, and not to have one man's policy upon goods strictly his own, cover another man's goods, who should take from the underwriter a separate policy, and pay another premium. Wherever these objects are attained, where the goods are substantially described, it does not matter that they are not called "goods on commission."

The insurance here is "on pork, lard, bacon, &c., and all other articles composing the stock of a pork-house." Now, the "stock of a pork-house" in Louisville, includes pork in said house that belongs to other people, and is held by the owners of the house on commission, which is of hogs sent to them, and which they have killed and packed, and for which they have charges and a special property. The terms of the policy are therefore complied with. And if there was any thing in the writing that did not correspond with the printing, the printing should give way to the writing. There is a good deal of proof that Insurance Companies in Louisville regard themselves as bound by such terms as are used in this policy, for the property held on commission; but there is no proof of an adjustment of a loss under such a policy, and I do not regard such evidence as making out a usage, but decide this point on the written words of the policy as quoted. In the case of the *Franklin Fire Ins. Co., of Phiadelphia* vs. *Hewitt, Allison & Co.*, 3 B. Monroe, 231, the Court decided that insurance on "their stock of merchandise, generally contained in their three story brick buildings, occu-

pied by them as a commission house," included goods on commission.

The policy itself, by the very words of the condition, contemplates that the plaintiffs had a right to make insurance in their own names on the goods of others which they held in trust, or on commission. And, indeed, I suppose this mode of making insurance has not been doubted in this country since the elaborate judgment in the case of *De Forest* vs. *Fulton Ins. Co.*, 1 Hall's Reports.

This mode of making up the policy is especially important in the insurance of pork and lard put up for others in a pork-house.

We have a very fluctuating climate; it shifts from cold to warm very suddenly in the season for pork-packing, and the hogs must be killed by thousands in a day, when the weather will permit. It is, too, in a manner impossible to comply literally with the conditions recited in this policy. The owners of the pork-house cannot tell for an hour what they have on commission. But Jackson, Owsley & Co., had agreed to sell to Harbinson & Hansborough forty thousand shoulders of pork. This was to be paid for in cash. No particular prices were mentioned in the bargain, but a large quantity had been weighed off for them, and inspected by their own inspector; $17,000 of the purchase money had been paid, and Harbinson says in his deposition, that he "considered the pork in the process of delivery at the time the money was paid." This, however, would not be conclusive, because he was not present. His partner "had come down to see to the weighing of the pork, and while here he paid the money." There was nothing further to be done on the part of the vendors after the pork was weighed. The witness, their clerk, says the property was theirs until it was paid for, and that they were bound to keep it insured; but these are deductions of his, for on cross-examination he can state no facts to sustain these positions.

It is a doctrine of the Civil Law, as well as of the Common Law, that "when the terms of a sale are agreed on, and the bargain is struck, and every thing the seller has to do with the goods is complete, the contract of sale becomes absolute as between the parties, without payment or delivery, and the property and the risk of accident to the goods vest in the buyer." Inst. lib. 3, tit. 24, sect. 3;

2 Kent's Com. 492; Smith's Mercantile Law, 481, 482; *Ruggs* vs. *Minnett*, 11 East. 210; *Willis* vs. *Willis*, 6 Dana, 48; *Crawford* vs. *Smith*, 7 Dana, 59.

I suppose there would have been no difficulty, if these goods had not been paid for in convenient time, in sustaining an action against Harbinson & Hansborough for goods sold; and this, I think, is a very good test as to the change of property. I know it may be different by the agreement of the parties, but there is no agreement or understanding of that kind proved here.

It is true, this pork was to be smoked at the establishment of the plaintiffs, but this was by a different contract from the purchase, and it was to be paid for separately. It was found that the forty thousand shoulders in bulk-meat, could not be furnished, and it was agreed that a quantity which was then smoking, should be put in, to make up the amount purchased. This pork was in the process of smoking when the fire took place, and, of course, it perished the property of the vendors, if it perished at all.

As to the pork that had been weighed and set apart, it was no longer a part of the *stock* of the pork-house, and was not included in the policy, any more than any other property sold at the pork-house and casually left there. That there was a right to hold it in possession until paid for in full, can make no difference; nor can it continue as a part of the stock because it was contemplated to be smoked there. No smoking had commenced, and the vendees had the power to withdraw their property at any time. It was not stock like that killed and packed by the owners of the pork-house, which could not be withdrawn at the pleasure of the consignors merely, as in that there was a special property, and all accounts had to be adjusted and paid, and then the articles designated and yielded to the consignors before they could take.

The master is ordered to make up the adjustment and contribution according to the foregoing opinion.

Ripley and *Logan*, for Plaintiffs.

Wolfe and *Caldwell*, for Defendants.